

12-110

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CENTURY 21 DEPARTMENT STORES, LLC,

Index No.:

COMPLAINT

Plaintiff,

- against -

PLAINTIFF DEMANDS
TRIAL BY JURY

LEXINGTON INSURANCE COMPANY,

Defendant.
-----X

Plaintiff CENTURY 21 DEPARTMENT STORES, LLC, by and through its attorneys,
WEG AND MYERS, P.C., as and for their Complaint allege as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against Defendant LEXINGTON INSURANCE COMPANY for breach of contract.
2. This action arises from the failure of Defendant to indemnify Plaintiff pursuant to a commercial property policy of insurance issued by Defendant to Plaintiff.
3. The policy of insurance at issue herein insures for, amongst other coverages, business interruption and expediting expense losses up to a limit of \$25 million. As a direct result of Tropical Storm Irene, which made landfall on or around August 27, 2011, and the ensuing effects of the storm, Plaintiff's various retail stores in New York and New Jersey suffered a loss of business income. Moreover, Plaintiff incurred necessary expediting expenses in an effort to minimize the loss at one of its retail locations. Notwithstanding that said losses were covered losses pursuant to the terms and conditions of the aforesaid policy of insurance, Defendant has denied coverage for the losses suffered by Plaintiff.

JURISDICTION

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

VENUE

5. The venue of this matter is appropriate in this district under 28 U.S.C. §1391(a)(2) because a substantial part of the events and omissions giving rise to the issues at bar occurred within the geographical confines of the Southern District of New York.

PARTIES

6. At all times hereinafter mentioned, Plaintiff CENTURY 21 DEPARTMENT STORES, LLC (hereinafter “CENTURY 21”), was and is a domestic limited liability company duly organized and existing under and by virtue of the laws of the State of New York having its principal place of business at 22 Cortland Street, New York, New York 10007.

7. At all times hereinafter mentioned, Defendant LEXINGTON INSURANCE COMPANY (hereinafter referred to as “LEXINGTON”) was and still is a foreign business corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal place of business located in the State of Massachusetts, Suffolk County.

8. At all times hereinafter mentioned, Defendant LEXINGTON was and still is authorized by the Superintendent of Financial Services of the State of New York, as a surplus lines insurer, to issue policies of insurance, including the policies at issue herein, in the State of New York.

BACKGROUND FACTS

CENTURY 21's RETAIL STORES

9. At all relevant times herein, CENTURY 21 was in the business of operating retail department stores, selling apparel and accessories to the general public, with locations in New York and New Jersey.
10. At all relevant times herein, CENTURY 21 operated, and continues to operate, a retail department store in downtown Manhattan, located at 22 Cortland Street, New York, New York 10007 ("Century 21 Downtown").
11. At all relevant times herein, CENTURY 21 operated, and continues to operate, a retail department store in the Borough of Brooklyn, located at 472 86th Street, Brooklyn, New York 11209 ("Century 21 Brooklyn").
12. At all relevant times herein, CENTURY 21 operated, and continues to operate, a retail department store in Westbury, Long Island, located at 1085 Old Country Road, Westbury, New York 11590 ("Century 21 Long Island").
13. At all relevant times herein, CENTURY 21 operated, and continues to operate, a retail department store in the Borough of Queens, located at 61-63 Junction Boulevard, Rego Park, New York 11374 ("Century 21 Queens").
14. At all relevant times herein, CENTURY 21 operated, and continues to operate, a retail department store in Paramus, New Jersey, located at 200 Bergen Town Center, Paramus, New Jersey 07652 ("Century 21 Paramus").
15. On or about September 22, 2011, CENUTRY 21 officially opened a retail

department store in uptown Manhattan, located at 1972 Broadway, New York, New York 10023 (“Century 21 Lincoln Center”).

16. On or about September 15, 2011, CENTURY 21 had a “soft opening” for the Century 21 Lincoln Center location.

TROPICAL STORM IRENE

17. On or about August 27, 2011, Tropical Storm Irene made landfall in and around New York City and Northeastern New Jersey, including but not limited to the areas where the Century 21 Downtown, Century 21 Brooklyn, Century 21 Long Island, Century 21 Queens and Century 21 Paramus were located (collectively referred to herein as the “Century 21 Retail Locations”).

18. The Century 21 Downtown, Century 21 Brooklyn and Century 21 Queens retail locations are situated along and/or near certain public transportation stops, including stops on various rail, subway and bus lines.

19. The Century 21 Long Island and Century 21 Paramus retail locations are situated along and/or near certain public transportation stops, including stops along various bus routes which service said stores and/or their parking lots directly.

20. In anticipation of and as a result of Tropical Storm Irene, government officials at both the state and municipal levels in New York and New Jersey mandated the cessation of all public transportation, including rail, subway and bus lines, servicing New York City, Long Island and New Jersey, including but not limited to the areas where the Century 21 Retail Locations were located.

21. As a result of the aforesaid cessation of public transportation, access to the vicinities of the Century 21 Retail Locations was restricted.

22. In anticipation of and as a result of Tropical Storm Irene, a State of Emergency was declared in the State of New York and the State of New Jersey.

23. In anticipation of and as a result of Tropical Storm Irene, government officials at both the state and municipal levels in New York issued evacuation orders to residents in and around selected areas in New York City, including but not limited to the area where the Century 21 Downtown retail store is located.

24. As a result of the aforesaid evacuation orders, access to the vicinity of the Century 21 Downtown retail store was further restricted.

25. As a result of these occurrences, CENTURY 21 suffered a loss of business income at the Century 21 Retail Locations in an amount to be determined but believed to exceed \$1,185,380.00.

THE LINCOLN CENTER STORE

26. At and around the time of Tropical Storm Irene, Century 21 Lincoln Center, a new retail location, was undergoing construction in preparation for its grand opening on September 22, 2011.

27. In advance of the September 22, 2011 grand opening of Century 21 Lincoln Center, CENTURY 21 had scheduled a "soft opening" for September 13, 2011, wherein CENTURY 21 intended on commencing business operations at Century 21 Lincoln Center on said date.

28. Although still in the course of construction, portions were sufficiently complete so that Century 21 Lincoln Center would have been ready for a “soft opening” on September 13, 2011.

29. As a result of Tropical Storm Irene, construction operations at Century 21 Lincoln Center were delayed.

30. As a result of the delay of construction operations at Century 21 Lincoln Center, the Lincoln Center Store’s “soft opening” was delayed by two (2) days to September 15, 2011.

31. As a result of the two (2) day delayed commencement of business operations at Century 21 Lincoln Center, CENTURY 21 suffered a loss of business income due to the loss of business at Century 21 Lincoln Center in an amount to be determined but believed to exceed \$287,773.00.

32. To prevent a more extended delay of the Century 21 Lincoln Center’s “soft opening,” expenses were necessarily incurred by CENTURY 21 in an amount to be determined but believed to exceed \$71,797.17.

33. The aforesaid expenses necessarily incurred by CENTURY 21 reduced the loss of income amount CENTURY 21 would have suffered if the “soft opening” did not take place on September 15, 2011.

THE LEXINGTON POLICY OF INSURANCE

34. Heretofore and prior to August 27, 2011, LEXINGTON, for good and valuable consideration, issued to made and issued to CENTURY 21 a certain commercial property policy of insurance bearing number 025031693 (hereinafter referred to as the “Subject Policy”) with limits of liability in the amount of \$25,000,000.00 and with effective dates of July 20, 2011 through and

including July 20, 2012, wherein and whereby LEXINGTON insured CENTURY 21's business income and expediting expenses against all risks of direct physical loss or damage, including tropical storms.

35. The Subject Policy provides coverage for business interruption losses pursuant to the "Interruption By Civil Authority" and "Builders Risk Extension" coverage grants contained therein.

36. The Subject Policy also contains an "Expediting Expense" coverage grant.

37. CENTURY 21 timely submitted claims to LEXINGTON under the "Interruption By Civil Authority" and "Builders Risk Extension" coverage grants of the Subject Policy for the aforesaid loss of business income due to the interruption of business at the Century 21 Retail Locations and Century 21 Lincoln Center, in the respective amounts of \$1,185,380.00. and \$287,773.00.

38. CENTURY 21 also timely submitted a claim to LEXINGTON under the "Expediting Expense" coverage grant of the Subject Policy for those expenses incurred by CENTURY 21 to prevent a more extended delay of Century 21 Lincoln Center's "soft opening," which reduced the total loss of income CENTURY 21 would have suffered if the "soft opening" did not take place.

39. Notwithstanding the aforesaid, to date LEXINGTON has not indemnified CENTURY 21 for its aforesaid loss of business income and expediting expenses.

**AS AND FOR A FIRST CLAIM AGAINST
DEFENDANT LEXINGTON INSURANCE COMPANY**

40. Plaintiff repeats, reiterates and realleges each and every allegation contained in

paragraphs "1" through "39," inclusively, with the same force and effect as though more full set forth herein at length.

41. Due to the aforesaid mandates by government officials, imposed as a result of Tropical Storm Irene, CENTURY 21 suffered a loss of business income at the Century 21 Retail Locations in an amount to be determined but believed to exceed \$1,185,380.00.

42. Notwithstanding the fact that CENTURY 21 timely submitted a claim to LEXINGTON under the Subject Policy for said loss of business income, LEXINGTON failed to indemnify CENTURY 21 for the full amount of said loss, although duly demanded.

43. By failure to make fully payment pursuant to the provision of the Subject Policy, LEXINGTON has breached its insurance contract with CENTURY 21.

44. As a result of LEXINGTON's breach of contract, CENTURY 21 has suffered damages in the amount of at least \$1,185,380.00.

**AS AND FOR A SECOND CLAIM AGAINST
DEFENDANT LEXINGTON INSURANCE COMPANY**

45. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "44," inclusively, with the same force and effect as though more full set forth herein at length.

46. Due to the two (2) day delayed commencement of business operations at Century 21 Lincoln Center as a result of Tropical Storm Irene, CENTURY 21 suffered a loss of business income at Century 21 Lincoln Center in an amount to be determined but believed to exceed \$287,773.00.

47. Notwithstanding the fact that CENTURY 21 timely submitted a claim to

LEXINGTON under the Subject Policy for said loss of business income, LEXINGTON failed to indemnify CENTURY 21 for the full amount of said loss, although duly demanded.

48. By failure to make fully payment pursuant to the provision of the Subject Policy, LEXINGTON has breached its insurance contract with CENTURY 21.

49. As a result of LEXINGTON's breach of contract, CENTURY 21 has suffered damages in the amount of at least \$287,773.00.

**AS AND FOR A THIRD CLAIM AGAINST
DEFENDANT LEXINGTON INSURANCE COMPANY**

50. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "49," inclusively, with the same force and effect as though more full set forth herein at length.

51. Due to the delayed construction operations at Century 21 Lincoln Center as a result of Tropical Storm Irene, CENTURY 21 incurred necessary expenses to prevent a more extended delay of the Century 21 Lincoln Center's "soft opening."

52. Said expenses reduced the total loss of income CENTURY 21 would have suffered if the "soft opening" did not take place on September 15, 2011.

53. Notwithstanding the fact that CENTURY 21 timely submitted a claim to LEXINGTON under the Subject Policy for said "expediting expenses", LEXINGTON failed to indemnify CENTURY 21 for the full amount of said expenses, although duly demanded.

54. By failure to make fully payment pursuant to the provision of the Subject Policy, LEXINGTON has breached its insurance contract with CENTURY 21.

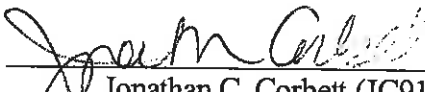
55. As a result of LEXINGTON's breach of contract, CENTURY 21 has suffered damages in the amount of at least \$71,797.17.

WHEREFORE, Plaintiff CENTURY 21 DEPARTMENT STORES LLC, demands judgment as follows:

- (a) on the First Claim against LEXINGTON INSURANCE COMPANY, judgment in an amount to be determined but believed to exceed \$1,185,380.00., plus interest thereon from August 27, 2011, together with costs and disbursements of this action;
- (b) on the Second Claim against LEXINGTON INSURANCE COMPANY, judgment in an amount to be determined but believed to exceed \$287,773.00, plus interest thereon from August 27, 2011, together with costs and disbursements of this action;
- (c) on the Third Claim against LEXINGTON INSURANCE COMPANY, judgment in an amount to be determined but believed to exceed \$71,797.17, plus interest thereon from August 27, 2011, together with costs and disbursements of this action; and
- (d) for such other and further relief as to which this Court deems just and proper.

WEG AND MYERS, P.C.
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Dated: New York, New York
March 6, 2012

Docket No.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTURY 21 DEPARTMENT STORES, LLC,

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-against -

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SUMMONS AND COMPLAINT

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